

AMENDED IN SENATE MARCH 13, 2003

SENATE BILL

No. 136

Introduced by Senator Figueroa

February 5, 2003

An act to amend Section 9855.2 of the Business and Professions Code, to add Section 1102.19 to the Civil Code, and to amend Section 12762 of the Insurance Code, relating to ~~service~~ contracts.

LEGISLATIVE COUNSEL'S DIGEST

SB 136, as amended, Figueroa. ~~Electronic and appliance repair dealers: service contracts~~ *Contracts.*

Existing

(1) *Existing* law, the Electronic and Appliance Repair Dealer Registration Law, regulates consumer warranties and the activities of service contractors. Existing law defines a "service contract" to mean a contract in writing to perform services relating to the maintenance, replacement, or repair of certain electronic and appliance items. Existing law requires a service contract seller to meet specified requirements in order to issue, sell, or offer for sale a service contract. Existing law provides that a violation of these provisions is a crime.

This bill would additionally require a service contract seller who provides a guarantee or warranty in conjunction with a service contract to disclose to the customer, in writing, the nature and extent of the guarantee or warranty and a clear explanation of coverage of the guarantee or warranty. Because this bill would place additional requirements on service contract sellers, the violation of which would be a crime, the bill would impose a state-mandated local program.

(2) *Existing law requires that a seller of residential real property disclose specified attributes of that property prior to the transfer of title*

and provides a form for this purpose. Existing law also requires an owner of residential real property who knows of a release of an illegal controlled substance on the property to make a specified disclosure.

This bill would require a licensed real estate broker who is acting as an agent for a buyer to fully explain to the buyer all the restrictions, exclusions, and limitations in a home protection contract, when such a contract is offered as part of a residential real property transaction, as defined. The bill would provide for a civil penalty of \$5,000 for a violation of its provisions.

(3) Existing law requires that home protection contracts set forth, in clear and conspicuous terms, all exclusions and limitations respecting the extent of coverage and all limitations respecting the performance of services, among other information.

This bill would provide, in connection with these requirements, that home protection contracts set forth the services that may not be performed due to improper previous repairs, improper installation, design deficiency, or preexisting conditions, and any restrictions on the companies that may be used for the performance of services.

~~The~~

(4) The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

Vote: majority. Appropriation: no. Fiscal committee: yes. State-mandated local program: yes.

The people of the State of California do enact as follows:

1 SECTION 1. Section 9855.2 of the Business and Professions
2 Code is amended to read:
3 9855.2. (a) A service contract seller shall not issue, sell, or
4 offer for sale a service contract unless he or she complies with one
5 of the following requirements:
6 (1) Files with the director the most recent annual report on
7 Form 10-K required by the Securities and Exchange Commission,
8 reflecting a net worth greater than the sum of the deferred revenues
9 from service contracts in force. If the service contractor is a foreign
10 corporation that files a comparable audited financial statement

1 with its home government or with the United States government,
2 the director may deem that statement an acceptable substitute for
3 Form 10-K.

4 (2) Obtains a service contract reimbursement insurance policy.

5 (3) Sells service contracts that are administered by a service
6 contract administrator who has obtained a service contract
7 reimbursement insurance policy covering the seller's service
8 contracts.

9 (4) Maintains and annually verifies to the director a funded
10 account held in escrow equal to a minimum of 25 percent of the
11 deferred revenues from the service contracts in force.

12 (b) A service contract administrator shall not administer
13 service contracts sold in this state unless a service contract
14 reimbursement insurance policy covering these service contracts
15 has been obtained.

16 (c) A service contract seller who provides a "guarantee" or
17 "warranty" in conjunction with a service contract shall disclose
18 the following to the customer in writing:

19 (1) The nature and extent of the guarantee or warranty.

20 (2) A clear explanation in writing of what will and will not be
21 covered under the guarantee or warranty.

22 (d) This section shall not affect the ability of the director to
23 further define or clarify the requirements regarding a guarantee or
24 warranty provided by a service contract seller.

25 SEC. 2. *Section 1102.19 is added to the Civil Code, to read:*

26 1102.19. (a) *If a home protection contract is offered to a*
27 *buyer as part of a transaction subject to this article, and a licensed*
28 *real estate broker is acting as an agent for the buyer, that broker*
29 *shall fully explain to the buyer all the restrictions, exclusions, and*
30 *limitations regarding the home protection contract prior to the*
31 *buyer entering into the contract.*

32 (b) *If a real estate broker fails to fulfill the requirements of*
33 *subdivision (a), the broker shall be liable for a civil penalty not to*
34 *exceed five thousand dollars (\$5,000) for each violation.*

35 SEC. 3. *Section 12762 of the Insurance Code is amended to*
36 *read:*

37 12762. (a) A home protection contract shall specify, in clear
38 and conspicuous terms, the following information:

39 (1) Each of the appliances, systems and components covered
40 by the contract.

1 (2) ~~All~~ A clear explanation of all exclusions and limitations
2 respecting the extent of coverage, *including, but not limited to, the*
3 *following:*

4 (A) *The services that may not be performed due to improper*
5 *previous repairs or improper installation of appliances, systems,*
6 *or components covered under the contract.*

7 (B) *The services that may not be performed due to design*
8 *deficiency or preexisting conditions regarding appliances,*
9 *systems, or components covered under the contract.*

10 (3) The period during which the contract will remain in effect,
11 the protection contract fee and the renewal terms, if any.

12 (4) With respect to the performance of services by the home
13 protection company, all of the following:

14 (A) The services to be performed by the company and the terms
15 and conditions of such performance.

16 (B) The service fee or fees, if any, to be charged for such
17 services.

18 (C) All limitations respecting the performance of services,
19 including any restrictions as to the time period when or
20 geographical area within which services may be requested or will
21 be performed, *or the companies that may be used for the*
22 *performance of services.*

23 (D) A statement that services will be performed upon
24 telephonic request therefor to the company, without any
25 requirement that claim forms or applications be filed prior to the
26 rendition of service.

27 (E) A representation that services will be initiated by or under
28 the direction of the company within 48 hours after a request is
29 made for ~~such~~ the services by any person, *or agent of any person,*
30 entitled to make ~~such~~ the request under the contract, ~~or the agent~~
31 ~~of such person.~~

32 (b) The commissioner may adopt, pursuant to Chapter 3.5
33 (commencing with Section 11340) of Part 1 of Division 3 of Title
34 2 of the Government Code, ~~such~~ any reasonable regulations ~~as that~~
35 may be necessary to make more specific the provisions of this
36 section. Those regulations may also establish such other contract
37 form standards and requirements as the commissioner may deem
38 necessary and appropriate in the public interest. However, this
39 section does not authorize the commissioner to specify those
40 appliances, systems, or components which must be covered by a

1 home protection contract except to the extent necessary to
2 guarantee the equity of the exclusions from coverage offered or
3 provided under a contract, or to the extent necessary to avoid
4 illusory coverage due to the nature or extent of exclusions from the
5 contract.

6 *SEC. 4.* No reimbursement is required by this act pursuant to
7 Section 6 of Article XIII B of the California Constitution because
8 the only costs that may be incurred by a local agency or school
9 district will be incurred because this act creates a new crime or
10 infraction, eliminates a crime or infraction, or changes the penalty
11 for a crime or infraction, within the meaning of Section 17556 of
12 the Government Code, or changes the definition of a crime within
13 the meaning of Section 6 of Article XIII B of the California
14 Constitution.

